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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

PRESENT

THE HON'BLE MR. JUSTICE ASHOK BHAN

AND

THE HON'BLE MR. JUSTICE S.R. VENKATESHA MURTHY

W.P. NO: 2036 & 2061-64 OF 1998

BETWEEN :

1. Smt.Girija
Wo Shankara Shetty,
Major,
2. Smt.Seethamma,
W/o Ramakrishnappa
Major,
3. Smt.Nagamma,
W/o Banashankarappa,
Major
4. C.Rudrappa,
S/o Chikkaveerappa,
Major,
5. Narayana Reddy
S/o Late Annaiah Reddy,
Major,

3a

All are residing at No. 3 & 4,
20th Main, B.T.M. 1st Stage,
Thavarekere, Bangalore.

.. Petitioners

(By Sri.K.N.Subba Reddy, Adv.)

...2)

AND :

1. The State of Karnataka,
by its Secretary to the
Department of Excise,
M.S.Building, Bangalore-1
 2. The Deputy Commissioner,
(Excise),Bangalore Urban
District, Bangalore.
 3. V.Rajendra Prasad,
S/o T.Venkatappa
CL-2 Licensee, No. 3/2
20th Main Road, 1st Stage,
Thavarekere,Bangalore-29
.. Respondent
- (By Sri. H.Kantharaja, GA for R1 & 2,
Sri. G.K.Bhat, Adv. for R3)

* * *

This petition is filed praying to quash the
licence CL-2 issued by R2 to R3, direct R2 not to
issue any licence and grant interim order, etc.,

This petition is coming on for prly.
hearing this day, ASHOK BHAN.J., delivered the
following Order :

...3)

ORDER

Residents of 20th Main Road, B.T.M, I stage, Thavarekere, Bangalore, (hereinafter referred to as 'the petitioners') have filed this petition seeking to quash order annexure R-1 passed by Deputy Commissioner (Excise), Bangalore Urban District, Bangalore, (R-2), attached with the statement of objections of R-3, in granting permission to the 3rd respondent, to open a retail liquor shop in their locality in violation of the Karnataka Excise Licences (General Conditions) Rules, 1967 (hereinafter referred to as 'the Rules') framed by the State of Karnataka, in exercise of its powers conferred by Section 71 of the Karnataka Excise Act, 1965.

2. It has been averred by the petitioners, that from the year 1991-92 to 97-98, the 3rd respondent obtained CL-2 licence from the 2nd respondent to sell retail liquor in the premises bearing No.36, Sarjapur Road, Chikkasandra, Bangalore. On a direction sought by the 3rd respondent to shift the shop to 3/2, 20th Main, B.T.M, I Stage,

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Thavarekere, Bangalore, the 2nd respondent without taking no-objection from the residents granted the permission to shift the licence in violation of Rule 5. That the 3rd respondent constructed the building measuring 30' X 12' over a main sewerage line situated besides 20th Main, B.T.M, I stage, unauthorisedly without taking the approval of the Corporation. The liquor shop is situated within about 40 meters from a mosque. The Maulvi of the Mosque has submitted a letter of grievance against the indiscriminate grant of licence within the precincts of the mosque. The copy of the same is produced as annexure-'B'. Other general allegations that the liquor shop has been opened in a residential locality seriously threatening to the peaceful existence of the residents specially the woman and children has also been made. It is also stated that educational institutions like schools are situate within the periphery of 100 meters from the liquor shop.

Annexure

3. On a notice issued to the respondents, separate statement of objections on behalf of R-1 and R-2 on the one side and R-3 on the other, has been filed.

4. In the statement of objections filed by R-1 and R-2, it is stated that the liquor vend has been permitted to be shifted after being satisfied about the feasibility and competency for running liquor business under CL-2 at the place to where it has been shifted. It is denied that there is a mosque situated within a distance of 40 to 50 meters and that the mosque is situated in a different road altogether. The place for which the licence is given is not directly connected with any place of worship. That the petitioners did not file any objections before the 2nd respondent before the grant of permission to shift the premises for sale of liquor. It has been emphatically stated that the authorities have permitted the shifting of the premises in accordance with the Excise Rules.

Amr

5. In the statement of objections filed by the 3rd respondent it has been admitted that there is a mosque situated at 70 meters from the premises from where the 3rd respondent is running the business and there is a connecting road between the said mosque and the licensed premises of the 3rd respondent. That the residents of the locality or the public did not file their objections before the authorities. It is denied that the premises to which the CL-2 licence has been shifted is located in a residential area as the premises is situated in the commercial complex constructed only for commercial activity. It was denied that the building was constructed illegally and without the sanctioned plan. It was asserted that the building had been constructed in accordance with law and following the Rules and Regulation governing the construction of building.

6. Counsel for the parties have been heard.

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7. Rules have been made applicable to all licences issued under the Karnataka Excise Act, 1965, for the sale of liquor and every such licence is deemed to include the conditions prescribed by these Rules as general conditions. Rule 5 deals with restriction in respect of location of shops and the same reads as under:

"5. Restriction in respect of location of shops:- (1) No licence for sale of liquor shall be granted to a liquor shop or premises selected within a distance of 100 meters from any religious or educational institution or Hospital or any Office of the State Government or Central Government or Local Authorities or in a residential locality, where the inhabitants are predominantly belonging to Scheduled Castes or Scheduled Tribes or within a distance of 220 meters from the middle of the State High ways or National Highways.

EXPLANATION:- [(i) For the purpose of this rule 'National Highway' or 'State Highway' shall not include such parts of the National Highway or State Highway as are situated within the limits of a Municipal Corporation, City or Town Municipal Council, or such other authority having a population of twenty thousand or more.]

[(ii) For the purpose of this rule, the expression 'Hospital' means any Government Hospital, Primary Health Centre or Primary Health Unit and includes a Private

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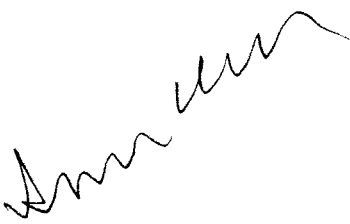
Hospital or a Private Nursing Home which has the facility of a minimum of thirty beds for treatment of inpatients.

(iii) For the purpose of this rule the expression 'Office of the State Government or Central Government or Local Authority' means and includes any State or Central Government Office headed by Group 'A' or 'B' grade officers and the main Administrative Offices of Local Bodies like City Corporation, City Municipal Council, Town Municipal Council, Town Panchayat, Zilla Panchayat, Taluk Panchayat and Grama Panchayat and such other offices, of the State Government, Central Government or Local Authorities as may be specified by the Government from time to time.]

(2) The Deputy Commissioner of Excise shall after making such enquiry as he deems fit approve the premises of liquor shop so selected and thereafter the description of the premises of liquor shop shall be entered in the Licence to be issued:

Provided that the Deputy Commissioner of Excise may, with the prior approval of the Excise Commissioner and for reasons to be recorded in writing, permit the location of any shop within a distance of 100 meters, but not less than 50 meters from the institutions, hospital, office or locality specified in sub-rule (1) within the City Municipality or City Corporation limits.

[Provided further that the Deputy Commissioner of Excise may grant licence to locate any liquor shop in a premises situated within a distance of 220 meters from the middle of a State Highway or a National Highway if such premises is located in a predominantly inhabited

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area, or extension of a town, village, or area the population of which is more than two thousand five hundred and where a licence to locate shop in such premises was granted or was existing during the period commencing from 1st July, 1992 and ending on {30th June, 1994}]

[(2-A) Notwithstanding anything, contained in sub-rules (1) and (2) the Deputy Commissioner of Excise may with a view to secure, convenience, morality, tranquility, decency or safety of the public or for any other reason, reject the application for licence to a liquor shop or premises after recording the reasons therefore.]

(3) For the purpose of this rule while measuring the distance specified in this rule, the distance shall be measured along the nearest path by which the pedestrian ordinarily reaches, adopting the mid-point of the entrance of the shop and the mid-point of the nearest gate of the institution, hospital or office if there is a compound wall and if there is no compound wall, the mid-point of the nearest entrance of the institution of the office.

(4) The Deputy Commissioner may, by order after giving the licence an opportunity of being heard, direct such licence to shift the location of any shop:-

(a) With a view to secure the convenience, morality, tranquility, decency or safety of the public [or compliance} of the provisions of these rules; or

(b) Where after the issue of a licence, any religious institution or educational institution is established [or any officer of the

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State Government or Central Government or Local Authorities or a Hospital is opened] within the limits sopecified in this rule;

to any other suitable place within such period, not exceeding three months as he may specify.]"

8. Educational institution has been defined in Rule 3(1) as a Pre-Primary, Primary or Secondary School owned or managed or recognised by any local authority, State or Central Government or any College affiliated to or established or managed by any University established by law. Rule 3(3) defines Religious Institution as a temple, mutt, mosque, church, synagogue, agiary or other place of public religious worship which is as the case may be, established or managed or owned by a public trust, the Religious and Charitable Endowments Commissioner or a Society registered under the Societies Registration Act or Wakf Board Act.

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9. Annexure R-1 is the authorisation by which Respondent No-3 has been permitted to shift his CL-2 licence to the 20th Main Road, I Stage, B.T.M. layout, Bangalore. It has been stated in annexure-R-1 that inspector of Excise has reported that though there is a Mosque situated at a distance of 70 meters, there is no connection between the mosque and the liquor shop. Residents or the public did not file objections. Excise Inspector recommended for grant of permission to shift the business. Based on this report and the report of the Superintendent of Excise that the premises is within the commercial area and there being no objection of any nature, permission was granted by the Deputy Commissioner under Rule 23 to shift the licence to the premises in question.

10. A perusal of Rule 5 shows that no licence for sale of liquor can be granted to a liquor shop or premises situated within a distance of 100 meters from any religious or educational institution or Hospital or any office of the State Government or Central Government or Local Authorities or in a



residential locality, where the inhabitants are predominantly belonging to Scheduled Castes or Scheduled Tribes or within a distance of 220 meters from the middle of the State Highways or National Highways. Admitted case of the parties is that there is a mosque at a distance of 70 meters from the premises in question. In the proviso to Sub-Rule (2) of Rule 5, the Deputy Commissioner can permit the location of liquor shop with the prior approval of the Excise Commissioner and by recording reasons in writing within a distance of 100 meters but not less than 50 meters from the institutions, hospital, office or locality specified in sub-rule (1) within the City Municipality or City Corporation limits. The word 'religious' in the proviso is missing. Even if it is taken that institutions mentioned in sub-rule (1) would include the religious institution as well, still the Deputy Commissioner did not grant the permission to locate the shop within 100 meters of the mosque with prior approval of the Excise Commissioner. The condition of recording reasons for locating the shop near religious institution has also not been

Annexure

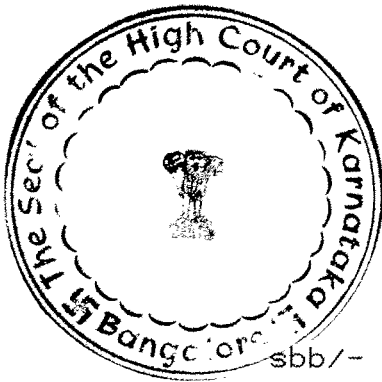
complied with. In our considered view, the permission to shift the liquor shop to a premises which is located at a distance of 70 meters from the mosque under the circumstances, could not be granted in view of the restriction placed by Rule 5. Deputy Commissioner in exercise of his powers could relax the condition under proviso to sub-rule (2) with the prior approval of the Excise Commissioner by recording reasons in writing in case the institutions would include the religious institutions as well. Respondents have not pleaded that permission had been granted by the Deputy Commissioner under proviso to sub-rule (2) after taking permission from the Excise Commissioner. The permission granted is held to be in violation of Rule-5 and therefore liable to be quashed.

11. Accordingly annexure-R-1 is quashed with immediate effect. Respondent No.3 is restrained from operating from the premises in dispute for retail sale of liquor. He shall, however, be permitted to sell liquor from any other premises which may be allocated to him

Annexure

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by the authorities in accordance with law.
Petitions stand allowed with no order as to
costs.



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JUDGE

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JUDGE